

FILED
STATESVILLE, N.C.
99 DEC 17 AM 10:08
U.S. DISTRICT COURT
W. DIST. OF N.C.

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL NO. 5:98-CV-19-MCK**

JASMYNE AND PATRICK BOBBITT, JR.,)
by their next friends, Alisa and)
Patrick Bobbitt, Sr., and **ALISA BOBBITT**)
and **PATRICK BOBBITT, SR., et al.**)
Plaintiffs,)
)
v.)
)
RAGE, INC., et al.)
Defendants.)
_____)

**MOTION TO ENTER JUDGMENT ON ORDER OF JULY 27, 1998,
OR IN THE ALTERNATIVE,
MOTION TO REOPEN TIME TO FILE AN APPEAL
(Fed. R. Civ. P. 58 and 79(a))
(Fed. R. App. P. 4(a)(1)(6))**

Plaintiffs Bobbitt, Brown, Chavis, Mangum, McClean, McDougal, and Utley ("the Cary plaintiffs") move the court to order the entry of judgment on its order of July 27, 1998, which granted the defendants' Rule 12(b)(6) motion to dismiss the above plaintiffs' claims.

In support of this motion, Plaintiffs show the court the following:

1. The judgment on this order which was originally entered on July 27, 1998 was stricken by this court's Order of October 20, 1998;
2. The docket reflects that there is no judgment entered on the Order of

July 27, 1998; and

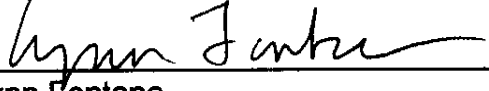
3. Plaintiffs cannot appeal the court's Order of July 27, 1998 until judgment is entered in accordance with Fed. R. Civ. P. 58 and 79.

In the alternative, should the court determine that the time for appeal started running upon the filing of Plaintiffs Hallman's, Miller's and Williams' stipulation of dismissal on August 2, 1999, pursuant to Federal Rule of Appellate Procedure 4(a)(1)(6), Plaintiffs Bobbitt, Brown, Chavis, Mangum, McClean, McDougal, and Utley move the court to enter an order reopening the time to file an appeal. In support of this motion, Plaintiffs' show the court the following:

1. Plaintiffs did not receive notice that a "final judgment" was entered in this case until Tuesday, December 7, 1999;
2. This motion is being filed within 180 days after the "final judgment or order" was entered; and
3. No party would be prejudiced by the court's reopening the time to file an appeal.

Respectfully submitted, this the 15th day of December, 1999.

FONTANA & LANIER, P.A.




Lynn Fontana
NCSB # 14459
1121 West Main Street, Suite 200
Durham, North Carolina 27701
(919) 682-2111

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon counsel for defendants by placing a copy in the United States mail in a prepaid envelope addressed as follows:

John Taylor, Esq.
Norwood Robinson, Esq.
Gray Robinson, Esq.
Robinson & Lawing, L.L.P.
370 Knollwood Street, Suite 600
Winston-Salem, NC 27103

This the 15th day of December, 1999.



Lynn Fontana